

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENJAMIN FONKEM,  
Plaintiff,

V.

DEAN O'MALLEY AND  
TIMOTHY AHERN, in their individual capacities,  
Defendants.

CIVIL ACTION  
NO. 04-10754-EFH

## DEFENDANT DEAN O'MALLEY'S REQUEST FOR ENTRY OF FINAL JUDGMENT

Defendant Dean O'Malley hereby moves, under Fed. R. Civ. P. 54(b), for the entry of final judgment as to all of the claims against him. As grounds, O'Malley cites the following:

- 1.) The plaintiff accepted an offer of settlement in March 2006 but then without explanation failed to sign the requisite release or stipulation of dismissal.
- 2.) Prior to the Court's status hearing of November 16, 2006, plaintiff's counsel successfully moved to withdraw, but nevertheless appeared at the status hearing. Along with counsel for both defendants, the plaintiff's former attorney informed the Court of the plaintiff's unexplained failure to sign the release or to communicate his intentions. Plaintiff was given notice of the motion to withdraw and of the status conference, but chose not to appear.
- 3.) After the hearing, the Court issued an Order of Dismissal, attached hereto as Exhibit A, in which the plaintiff was given until December 18, 2006 to execute the release or suffer dismissal of his action.
- 4.) On December 18, 2006 the plaintiff filed a handwritten paper asking for one month to retain a lawyer. See plaintiff's letter, attached as Exhibit B. The paper was not

served on defense counsel, and the defendant had no knowledge of the filing until the Court docketed it on January 29, 2007.

5.) Despite the plaintiff's representation, no lawyer has entered an appearance on his behalf, the plaintiff has not been heard from, and no release has been executed as far as is known.

6.) Therefore, the plaintiff has done nothing to prosecute this action for nearly one year. He has not complied with the Court's Order of Dismissal, and he has not complied with his own requested time frame for obtaining representation.

Wherefore, for all of the foregoing reasons, defendant Dean O'Malley requests that a separate and final judgment be entered in his behalf.

Respectfully submitted,

/s/ Joseph G. Donnellan  
Joseph G. Donnellan, BBO #558060  
LAW OFFICES OF TIMOTHY M. BURKE  
160 Gould Street, Suite 111  
Needham, MA 02494  
(781) 455-0707

Dated: January 31, 2007

**CERTIFICATE OF SERVICE**

I, Joseph G. Donnellan, hereby certify that I served a copy of the foregoing Motion for Entry of Judgment upon the plaintiff in the above captioned matter by way of first class mail, postage prepaid and upon all other parties by way of electronic filing with the Clerk of the United States District Court for the District of Massachusetts this 31<sup>st</sup> day of January, 2007.

/s/ Joseph G. Donnellan  
Joseph G. Donnellan